

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1789 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos.1 to 5 - No.

KRISHNABEN GAMBHIRSINH ZALA

Versus

ZALA GAMBHIRSINH BALUBHA

Appearance:

MR YS MANKAD for Petitioners
MS SHILPA SHAH for Respondent No. 1
PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/01/97

ORAL JUDGEMENT

This petition under Article 227 of the Constitution has been preferred by a wife and the two minor daughters of respondent No.1 for enhancement in the maintenance awarded by the lower Court under section 125 of the Criminal Procedure Code.

The petitioner having been estranged from the husband, respondent No.1, she started residing with her parents along with her minor daughters. Respondent No.1 having neglected to maintain the petitioners, they preferred Misc.Cri.Application No.4 of 1985 before the learned

Judicial Magistrate, First Class, Mundra. The petitioners claimed monthly maintenance of Rs.500/- for the wife and Rs.200/- to each of the minor daughters. Learned Magistrate under his judgment and order dated 3rd October, 1986, awarded a monthly maintenance of Rs.150/- to the wife and Rs.70/- to each of the minor daughters. Feeling aggrieved, the petitioners preferred a revision application No.103 of 1986 before the learned Sessions Judge, Kutch. The learned Sessions Judge, Kutch under his judgment and order dated 12th September, 1990 enhanced the amount of monthly maintenance awarded to the wife to that of Rs.200/- and to the children to that of Rs.100/- to each of the daughters. Feeling aggrieved, the petitioners have preferred this petition.

Learned Advocate Mr.Mankad has contended that the respondent No.1 was serving in the Food Corporation of India and was earning a monthly salary of Rs.1500/-. He also owned large tract of land of which some of the lands were sold; the respondent No.1 owned some 150 to 200 Bighas of agricultural lands and had annual income of Rs.20,000/- out of the agricultural lands. The family of the respondent No.1 also owned a large house with open piece of land which was large enough to accommodate ten houses. Considering this income of the respondent No.1 the petitioners should be awarded monthly maintenance as claimed by them. He has further submitted that respondent No.1 has not adduced any evidence in support of his income and, therefore, the statement made by the petitioner should be believed and the maintenance should be awarded considering the said income of the respondent No.1.

Be it noted that the petitioner has not produced any evidence in support of her claim that the respondent No.1 owned large pieces of lands. She has not produced the revenue records of the village which she could have easily done. As far as the salary of respondent No.1 is concerned, it has been proved by the pay slip brought on the records of the matter and it has been held that his salary was Rs.921/- while his take-home pay was Rs.655/per month. Even in absence of any revenue records the court has believed the petitioners' claim that respondent No.1 did own some agricultural land and has come to a conclusion that the monthly income of the respondent No.1 could be said to be that of Rs.1,000/- and considering such income the petitioners have been awarded a monthly maintenance of Rs.400/- as aforesaid. It is true that the respondent No.1 should have disclosed the extent of his income before the court. However, it was the petitioners' duty to support her claim by producing

the necessary evidence. Respondent No.1's salary has been proved to be Rs.921/-. The petitioner could have produced revenue records which she has failed to do. In absence of the revenue records the courts below have rightly rejected the petitioner's claim of the income of the respondent No.1 being Rs.20,000/- from the agricultural lands. If the revenue records were produced the extent and the nature of the land could have been ascertained and the extent of the share of the respondent No.1 in the said land also could have been ascertained. Thus, the courts below cannot be said to have erred in arriving at a hypothetical figure of Rs.1,000/- per month as far as the earnings of the respondent No.1 is concerned. In the circumstances, the maintenance of Rs.400/- per month allowed to the petitioners cannot be said to be disproportionately low. It is also brought on the records of the matter that the respondent No.1, in view of his service, has to live away from the family house and he must have been incurring some expenditure for separate residence.

In the circumstances, the judgment and the order of the lower courts do not warrant any interference by this court.

Petition is, therefore, dismissed. Rule is discharged.
